

Division 4, Chapter 4, Subchapter 5, Article 5, Sections 3664-3669:

Article 5. Grapevine Loss Assistance Program

The Secretary hereby establishes the grapevine loss assistance program to compensate eligible vineyard growers for grapevine losses due to Pierce's disease spread by the glassy-winged sharpshooter.

Section 3664. Purpose.

The Grapevine Loss Assistance Program (GVLAP) is established to provide a maximum aggregate \$7.14 million in payment to eligible vineyard owners who incur losses due to Pierce's disease spread by the glassy-winged sharpshooter.

Authority: Section 407, Food and Agricultural Code, and Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter).

Reference: Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter) and Sections 6045 through 6047, Food and Agricultural Code.

Section 3665. Application for GVLAP Form GWSS-003 (March 1, 2002).

(a) Application for compensation shall be made using a Department application form for this purpose.

(b) Application forms are available from the county agricultural commissioner, Pierce's Disease Control Program, or from the web site: <http://www.cdfa.ca.gov/phpps/pdcp>.

(c) Applications for the GVLAP shall be submitted directly to the county agricultural commissioner(s) of the county(ies) in which the vineyard(s) is located.

(d) The application form(s) shall be complete and submitted by mail, courier, or hand delivery by the close of business on June 1, 2002 and must include the original signature(s) of the person or entity (authorized representative).

(e) The application form(s) must be accompanied by Form W-9 Request for Taxpayer Identification Number and Certification (Department of the Treasury, Internal Revenue Service, Rev. January 2002) and all other documents required by this article.

(f) The application shall indicate the names of all owners (person) of each vineyard or the entity doing business.

(g) Any person or entity applying for and/or receiving compensation must permit authorized representatives of the program to enter their property during normal business hours without prior notice to assess the accuracy of information supplied to the department; to inspect, examine, and make copies on site of such reports and accounts to determine qualification or eligibility for or compliance with the program.

Authority: Section 407, Food and Agricultural Code, and Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter).

Reference: Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter) and Sections 6045 through 6047, Food and Agricultural Code.

Section 3666. Eligibility.

The following eligibility requirements apply to the GVLAP:

(a) Payments are authorized to compensate grape growers only for grapevine losses resulting from Pierce's disease spread by the glassy-winged sharpshooter. Payments are not authorized for grape production losses or for the cost of replanting grapevines.

(b) Distribution of the compensation payments shall be based on vineyard establishment cost, or a portion thereof, in the county in which the vineyard is located.

(c) Removal of the grapevines shall have been conducted as a result of infection by Pierce's disease spread by the glassy-winged sharpshooter.

(d) Each removed vineyard acre must have a minimum of 30 percent infection per contiguous acre.

(e) Vineyards must have been removed on or after August 10, 1999.

(f) Vineyards must have been removed on or before May 1, 2002.

(g) Documentation must be provided to confirm that the grapevine removal was due to infection by Pierce's disease spread by the glassy-winged sharpshooter.

(h) Proof or confirmation of Pierce's disease infection of the grapevines removed must be confirmed in writing by the local county agricultural commissioner, or the University of California Cooperative Extension farm advisor for viticulture, or by the vineyard owner by written certification that the vines were

removed because of infection by Pierce's disease.

(1) Owner certification must be accompanied by documentation and verification of the number of acres infected and removed.

(2) Owner certification shall include the date(s) the grapevines were planted and removed.

(3) The vineyard owner must submit as much evidence as possible (the most preferable method of confirmation being an accepted diagnostic test to indicate the presence of Pierce's disease by a government or university laboratory facility) indicating that the presence of Pierce's disease was the factor causing removal.

(A) The county agricultural commissioner and/or the farm advisor shall be consulted to identify and verify the actual acreage removed.

(B) If the presence of Pierce's disease is confirmed as described in (3) above, the sample submitted to the laboratory must be positively identified as representing the acreage removed.

(C) The number of samples must sufficiently evidence, to the satisfaction of the county agricultural commissioner or the farm advisor, that the infection rate was a minimum of 30 percent per contiguous acre.

Authority: Section 407, Food and Agricultural Code, and Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter).

Reference: Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter) and Sections 6045 through 6047, Food and Agricultural Code.

Section 3667. Application Review and Eligibility Determination.

(a) After receipt and review of each application, the county agricultural commissioner shall forward his/her recommendation regarding vineyard eligibility for compensation and the application, accompanied by all required documentation, to the Department's Pierce's Disease Control Program Sacramento office.

(b) All information provided by an applicant is subject for review for completeness and verification by the Pierce's Disease Control Program prior to the final determination of vineyard(s) eligibility. The area from which the grapevines were removed must be verified as an "infested area" based on the distribution of

glassy-winged sharpshooter as determined by the Pierce's Disease Control Program.

(c) The program shall provide written eligibility determinations to the applicant(s) by September 30, 2002.

(d) Payment shall be made to the name/business name that corresponds to the information provided on Form W-9 (as required by Section 3665[c]) by September 30, 2002, unless an extension is provided by the United States Department of Agriculture for distribution of the funds by December 31, 2002.

Authority: Section 407, Food and Agricultural Code, and Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter).

Reference: Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter) and Sections 6045 through 6047, Food and Agricultural Code.

Section 3668. Payment Criteria.

(a) The minimum acreage criterion is one (1) contiguous acre of removed vines demonstrating at least 30% infection rate per acre.

(b) Vineyards that were removed after two (2) years of age and prior to ten (10) years of age will be compensated at the adjusted compensation rate per acre. The adjusted compensation rate per acre will be calculated using the average cost of vineyard establishment (planting and development costs for the first five [5] years of vineyard age) for the areas affected prorated on the basis of total qualified acreage determined by the Department.

(c) The maximum rate of compensation for grapevine losses shall not exceed the estimated cost to establish a like vineyard, or portion thereof, in the county in which the vineyard is located.

(d) For every year of vineyard age greater than ten (10) years, three (3) % will be deducted from the adjusted compensation rate per year per acre for the first 25 years of vine age. For every year of vineyard age greater than 25 years, three and six-tenths (3.6) % will be deducted from the adjusted compensation rate up to and including vineyard age 40. There will be no compensation available for vineyards in excess of 40 years of age.

(e) If the total amount of applications for compensation exceeds the available funds, payments shall be reduced by a uniform percentage to match the available funds.

(f) All owners accepting vine loss compensation funds from the Department for the acreage claimed are prohibited from reapplying for vine loss compensation from the Department for the same acreage.

(g) Compensation limits per acre and pro-rata reimbursement levels will be calculated as a function of total qualified acreage at the end of the qualifying period.

(h) If the Department or United States Department of Agriculture determines that any provisions of the application, or of the rules and regulations governing the program have not been complied with by the owner receiving compensation, noncompliance may result in the owner not being entitled to any additional payments, the owner refunding any payments made in connection with the compensation program, and owner liability for any other damages incurred as a result of such non-compliance. Non-compliance includes, but is not limited to:

(1) The owner has adopted any scheme or other device which tends to defeat the purpose of the program provided for by this article;

(2) The owner has made any fraudulent representation with respect to such program;

(3) The owner has misrepresented any fact affecting a program determination.

(i) A vineyard owner must retain all financial records and accounts relating to compensation received under the program for a period of six (6) years after the date of payment, or until final resolution of any audit of records by the Department, whichever is later.

Authority: Section 407, Food and Agricultural Code, and Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter).

Reference: Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter) and Sections 6045 through 6047, Food and Agricultural Code.

Section 3669. Appeal/Hearing Procedures.

(a) An appeal of an eligibility decision relative to a compensation application may be filed with the Department's Pierce's Disease Control Program Sacramento office within fourteen (14) calendar days of the date of the decision. A hearing shall be conducted within seven (7) calendar days of an appeal that is timely filed. An appeal that is not timely filed shall be denied and no hearing shall be conducted in connection therewith.

(b) Hearings shall be conducted pursuant to Chapter 4.5 (commencing with Section 11400) of Division 3 of Title 2 of the Government Code and these regulations.

(c) Hearings shall be presided over and conducted by a hearing officer designated by the Secretary.

(d) Hearings may be conducted by telephone, at the discretion of the Secretary.

(e) The decision of the hearing officer shall be in writing. The decision shall be in minute order form, containing only a brief statement of the conclusion and findings to support the conclusion. It may be handwritten.

(f) The decision shall be issued within 24 hours after the conclusion of the hearing and may be issued orally at the conclusion of the hearing subject to written confirmation.

(g) The written decision shall be served on the appellant or designated representative either by personal service or, if available, by facsimile transmission.

(h) The hearing officer's decision shall be final and not appealable to the Secretary or any other officer of the Department.

(i) The appellant may seek judicial review of the hearing officer's decision by filing a petition for a writ of administrative mandamus in the appropriate court pursuant to Code of Civil Procedure Section 1084 *et seq.*

(j) Hearings shall be recorded by audiotape.

Authority: Section 407, Food and Agricultural Code, and Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter).

Reference: Stats. 2002, AB1242, Chapter 18, (An Act Relating to the Glassy-winged Sharpshooter); Sections 6045 through 6047, Food and Agricultural Code; Sections 11425.50 and 11440.10, Government Code; Section 1084 *et seq.*, Code of Civil Procedure.